

FIRM / AFFILIATE OFFICES

Barcelona	Moscow
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	Rome
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

February 21, 2017

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: WC Docket Nos. 10-90, 14-58, 07-135, 05-337, and 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2)(iv) of the Commission's rules,<sup>1</sup> ViaSat, Inc. responds to the *ex parte* submission filed by the American Cable Association ("ACA") on February 17, 2017 in the above-referenced proceeding.<sup>2</sup> ACA's submission—filed after the Commission released a Sunshine Notice—includes over 20 pages of new written material in which ACA: (i) attempts to justify the specific weighting scheme it first proposed weeks ago in this proceeding;<sup>3</sup> and (ii) describes the likely winners in the reverse auction under different bid weighting schemes. ViaSat responds to three critical inaccuracies in ACA's filing:

**First**, ACA incorrectly asserts that "no US satellite broadband provider currently publicly offers 25/3 Mbps with a data cap of at least 150 GB."<sup>4</sup> ViaSat is already providing satellite broadband service at 25/3 Mbps with a 150 GB monthly data allowance.<sup>5</sup>

---

<sup>1</sup> 47 C.F.R. § 1.1206(b)(2)(iv).

<sup>2</sup> See Letter from the American Cable Association to FCC, WC Docket No. 10-90 (Feb. 17, 2017) ("ACA Letter").

<sup>3</sup> See Letter from the American Cable Association to FCC, WC Docket No. 10-90 (Jan. 30, 2017).

<sup>4</sup> ACA Letter at 3 n.10.

<sup>5</sup> See Letter from ViaSat to FCC, WC Docket No. 10-90 (Feb. 16, 2017) (citing <http://www.exede.com/freedom/>) ("The Exede Freedom plan features an incredible 150

*Second*, ACA misrepresents the costs of providing satellite broadband service under CAF II. For example, ACA assumes that the *total* cost to deploy satellite service in the 25/3 Mbps/150 GB tier would be \$200 per subscriber.<sup>6</sup> ACA mistakenly bases this assertion solely on a comment made by another entity that ViaSat explained does not apply to ViaSat.<sup>7</sup> ACA flatly ignores ViaSat's unrebutted record evidence of the substantial costs involved in providing satellite broadband service.<sup>8</sup> ACA also misrepresents a statement about *monthly* revenue expectations as being a proxy for the *total* costs required to provide satellite broadband service.<sup>9</sup>

In addition, ACA falsely claims that the "incremental cost to serve a new location" with satellite broadband service "is effectively \$0" because satellite is already available in almost all eligible areas.<sup>10</sup> ViaSat's network capacity is not allocated to CAF II service areas because only about 4 percent of its customers are located in CAF II census blocks. Moreover, the unrebutted record reflects the significant costs satellite broadband providers would incur to serve CAF II locations, including: (i) the incremental and variable costs of providing satellite broadband service to a given household (*e.g.*, customer premises equipment and installation costs); (ii) the significant research, development, and infrastructure deployment costs associated with providing additional satellite capacity in order to service such households;<sup>11</sup> (iii) the opportunity costs associated with dedicating satellite capacity (both now and increasingly in the future) to sparsely populated CAF II areas and foregoing lucrative alternatives;<sup>12</sup> and (iv) the burdens associated with being a carrier-of-last-resort and an ETC.<sup>13</sup>

---

gigabyte monthly data allowance. This is the first satellite internet package to provide a data package this large, and it represents the direction we want to go with our service in the future.")) ("ViaSat Letter").

<sup>6</sup> ACA Letter at 20.

<sup>7</sup> See ViaSat Letter at 3.

<sup>8</sup> See Dr. Charles L. Jackson, *Satellite Service Can Help to Effectively Close the Broadband Gap* (Apr. 18, 2011), attached as Exhibit A to Comments of ViaSat, Inc., WC Docket No. 10-90 (Apr. 18, 2011).

<sup>9</sup> ACA Letter at 20 & n.51.

<sup>10</sup> ACA Letter at 21. ACA has no basis on which to assume the amounts of any auction bids by satellite providers. See *id.*

<sup>11</sup> See, *e.g.*, Q3 2017 ViaSat Earnings Conference Call (Feb. 9, 2017), *available at* <http://investors.viasat.com/events.cfm> (in which CEO Mark Dankberg reported that "[w]ith respect to CapEx, expenditures were up approximately \$124 million from the prior-year period, with the majority of this increase attributed to our ViaSat-3 satellite and the ViaSat-2 program, including the associated ground segments. Total spending in the period across the three projects was about \$209 million so far this year, or roughly double the level spend during the same period last year.").

<sup>12</sup> These costs are particularly high in ViaSat's case considering that: (i) about 96 percent of ViaSat's current residential broadband customers live outside CAF II areas; and (ii)

*Third*, ACA’s comparison of the results of different weighting methodologies and its predictions of how different technologies would fare in the auction is misleading. ACA’s weighting scheme, like that proposed by the Rural Coalition,<sup>14</sup> is just that: a carefully constructed scheme designed to ensure that fiber and cable technologies win—and satellite providers lose—no matter what prices the fiber and cable providers bid. And ACA, like the Rural Coalition, is able to achieve this result only by departing from the *CAF II Report and Order*, which clearly calls for winning bids to be selected by: (i) first calculating initial cost-effectiveness scores for each bid (a number representing the relationship of the bid to the reserve price for the relevant area);<sup>15</sup> (ii) applying relevant weighting factors directly to those initial cost-effectiveness scores to arrive at adjusted cost-effectiveness scores; and (iii) comparing the adjusted cost-effectiveness scores for a given area to identify and select the lowest weighted bid as the winner.<sup>16</sup>

The methodology proposed by ACA, like that proposed by the Rural Coalition, would turn the straightforward Commission approach on its head by instead applying relevant weighting factors to the reserve price for a given geographic area—instead of directly to each bidder’s initial cost-effectiveness score—and then adding the resulting reserve-price-based penalty to the initial cost-effectiveness score. In other words, those initial scores would be “grossed up” by a penalty based on fiber/cable costs determined by the Commission’s cost model for fiber/cable builds and reflected in the reserve price. This has nothing to do with satellite broadband. Notably, when aggregated the likely reserve prices are *five times* more than the

---

ViaSat’s growing airline broadband business requires significant amounts of capacity to serve passengers on commercial airliners and other types of aircraft. *See, e.g.*, Comments of ViaSat, Inc., WC Docket No. 10-90, at 8 (Jul. 21, 2016) (noting that “satellite providers typically have a variety of options with respect to the use of the finite throughput available over a given satellite” and that satellite providers “would incur significant opportunity costs” by foregoing other options, “particularly given the long-term obligations associated with acceptance of CAF support”).

<sup>13</sup> ViaSat Letter, Ex. B.

<sup>14</sup> ACA’s results are premised on its belief that weights should be set in a manner that “produces a tight spread” among bids and “enables all technologies to have a reasonable chance of prevailing.” ACA Letter at 9. All technologies should be able to compete in the reverse auction on an even playing field, not by applying weights in a manner that seeks to produce roughly similar adjusted bids. Indeed, where a given technology is more efficient than other technologies, effective weights would ensure that bids using cost-effective technology win decisively.

<sup>15</sup> *See Connect America Fund*, 31 FCC Rcd 5949, at ¶ 209 (2016) (“*CAF II Report and Order*”).

<sup>16</sup> *Id.* ¶ 211.

limited funds available for CAF II.<sup>17</sup> It makes no sense to base weighting penalties on an amount that is significantly more than a bidder actually may bid.

As a result, and as depicted on Exhibit A, otherwise-competitive satellite bids would be inflated by over 300 percent—which would effectively preclude satellite broadband providers from competing meaningfully in the auction.

In response to ACA's predictions about auction results under these predatory schemes, ViaSat includes as Exhibits B and C the results of its analysis of the likely impact of adopting these schemes. Specifically:

- Exhibit B depicts ViaSat's analysis of the likely additional coverage of CAF II areas if satellite is shut out of the auction through the application of the weighting methodology endorsed by ACA and the Rural Coalition. The red dots represent CAF II census block groups. The green dots represent the census block groups that likely would be won by fiber or cable bidders, which would likely consume the entire CAF II budget. The green dots are barely visible in the sea of red locations that would remain unserved.
- Exhibit C depicts ViaSat's analysis of the likely additional coverage of CAF II areas if satellite is given a meaningful opportunity to participate in the auction (*e.g.*, under the weighting methodology described in the *CAF II Report and Order*). The red dots represent CAF II census blocks groups. The blue dots represent the census block groups that likely would be won by satellite bidders. Substantially more CAF II locations would be served.

\* \* \* \* \*

For the forgoing reasons, ViaSat urges the Commission to reject the misrepresentations and flawed reasoning underlying ACA's February 17, 2017 filing and instead adopt auction weights and methodologies consistent with this submission and ViaSat's February 16, 2017 submission in this proceeding.

---

<sup>17</sup> See *Public Notice: Wireline Telecommunications Bureau Releases Preliminary List and Map of Eligible Census Blocks for the Connect America Phase II Auction*, DA 16-908 (rel. Aug. 10, 2016).

LATHAM & WATKINS<sup>LLP</sup>

Respectfully submitted,

/s/ John P. Janka

John P. Janka

Jarrett S. Taubman

*Counsel to ViaSat, Inc.*

Enc. (Exhibits A, B, C)

cc: Nicholas Degani  
Jay Schwarz  
Amy Bender  
Claude Aiken  
Lisa Hone  
Ryan Palmer  
Alexander Minard  
Heidi Lankau  
Katie King

**CAF II REVERSE AUCTION WEIGHTING:**  
Both Rural Coalition Approach *and* American Cable Association Approach  
*Mean that Terrestrial Technologies Win No Matter What They Charge*  
*By Structurally Excluding Satellite Again*

Sample Bids at Maximum Reserve Price				Rural Coalition				FCC		
				0/30/60/70/25 Weights Are Penalties Based on Terrestrial Costs				0/20/40/60/25 Weights Adjust Initial Bid Score		
Speed	Monthly Reserve Price	Auction Bid	% of Reserve Price	Initial Bid Score	Weight Reserve Price (not Bid Score)	Add Penalty	Total Score	Initial Bid Score	Weight Bid Score	Total Score
Above Baseline										
1 Gigabit	\$146	<b>\$146</b>	100%	100	0%	0	<b>100</b>	100	0	<b>100</b>
100 Mbps	\$146	\$117	80%	80	30%	44	124	80	20%	96
FCC Baseline										
25 Mbps Satellite	\$146	<b>\$40</b>	27%	27	85%	124	<b>151</b>	27	65%	<b>45</b>
Below Baseline										
10 Mbps Satellite	\$146	<b>\$40</b>	27%	27	95%	139	166	27	85%	51

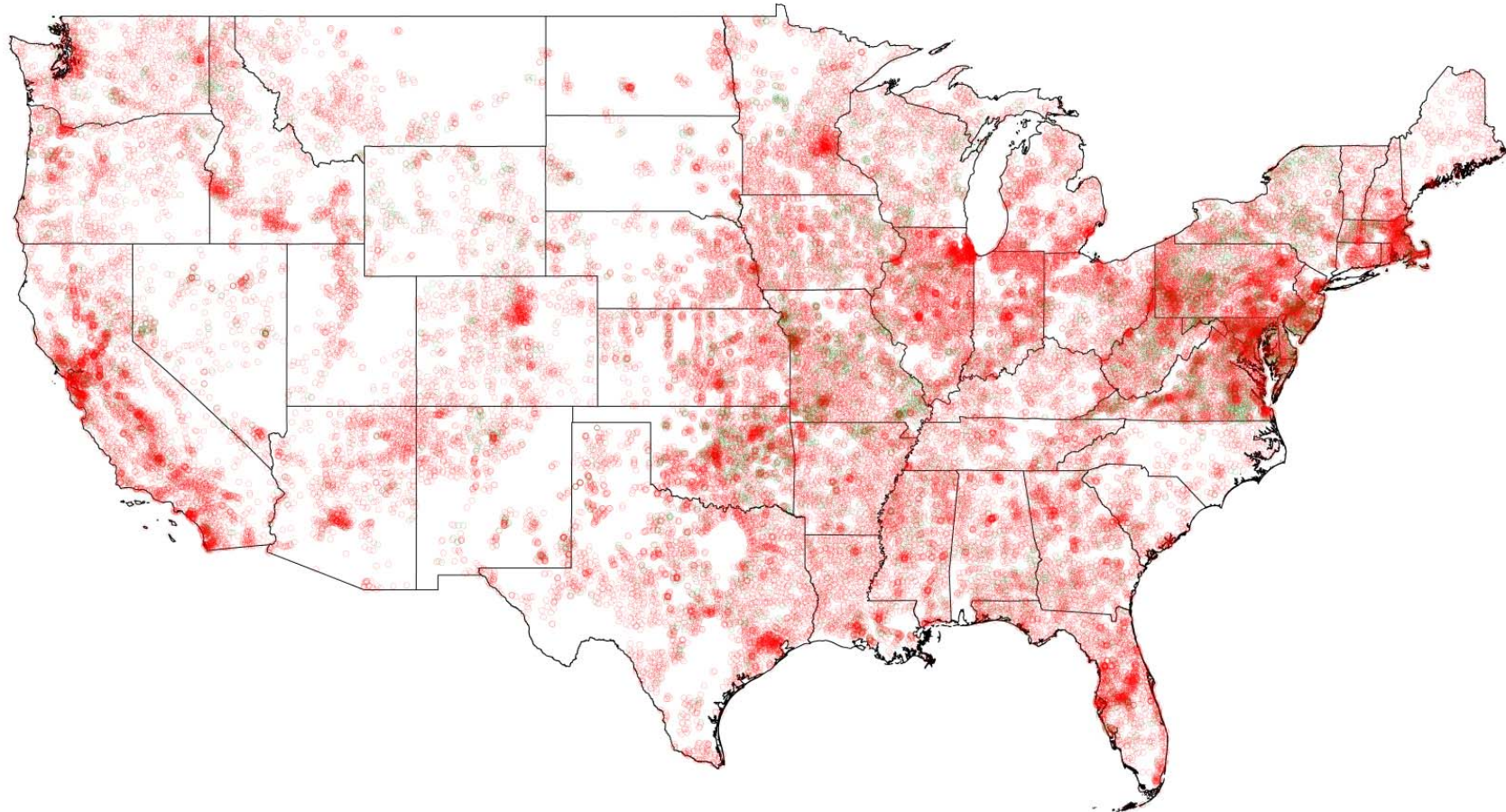
Winning Bid

Sample Bids at Maximum Reserve Price				American Cable Association				FCC		
				0/15/75/80/15 Weights Are Penalties Based on Terrestrial Costs				0/20/40/60/25 Weights Adjust Initial Bid Score		
Speed	Monthly Reserve Price	Auction Bid	% of Reserve Price	Initial Bid Score	Weight Reserve Price (not Bid Score)	Add Penalty	Total Score	Initial Bid Score	Weight Bid Score	Total Score
Above Baseline										
1 Gigabit	\$146	<b>\$146</b>	100%	100	0%	0	<b>100</b>	100	0	<b>100</b>
100 Mbps	\$146	\$117	80%	80	15%	22	102	80	20%	96
FCC Baseline										
25 Mbps Satellite	\$146	<b>\$40</b>	27%	27	90%	131	<b>159</b>	27	65%	<b>45</b>
Below Baseline										
10 Mbps Satellite	\$146	<b>\$40</b>	27%	27	95%	139	166	27	85%	51

Winning Bid

Reserve price set by much-higher terrestrial costs used in FCC cost model  
Lowest score wins in a reverse auction

**Fiber and Cable Weighting Methodology Hurts the Nation**

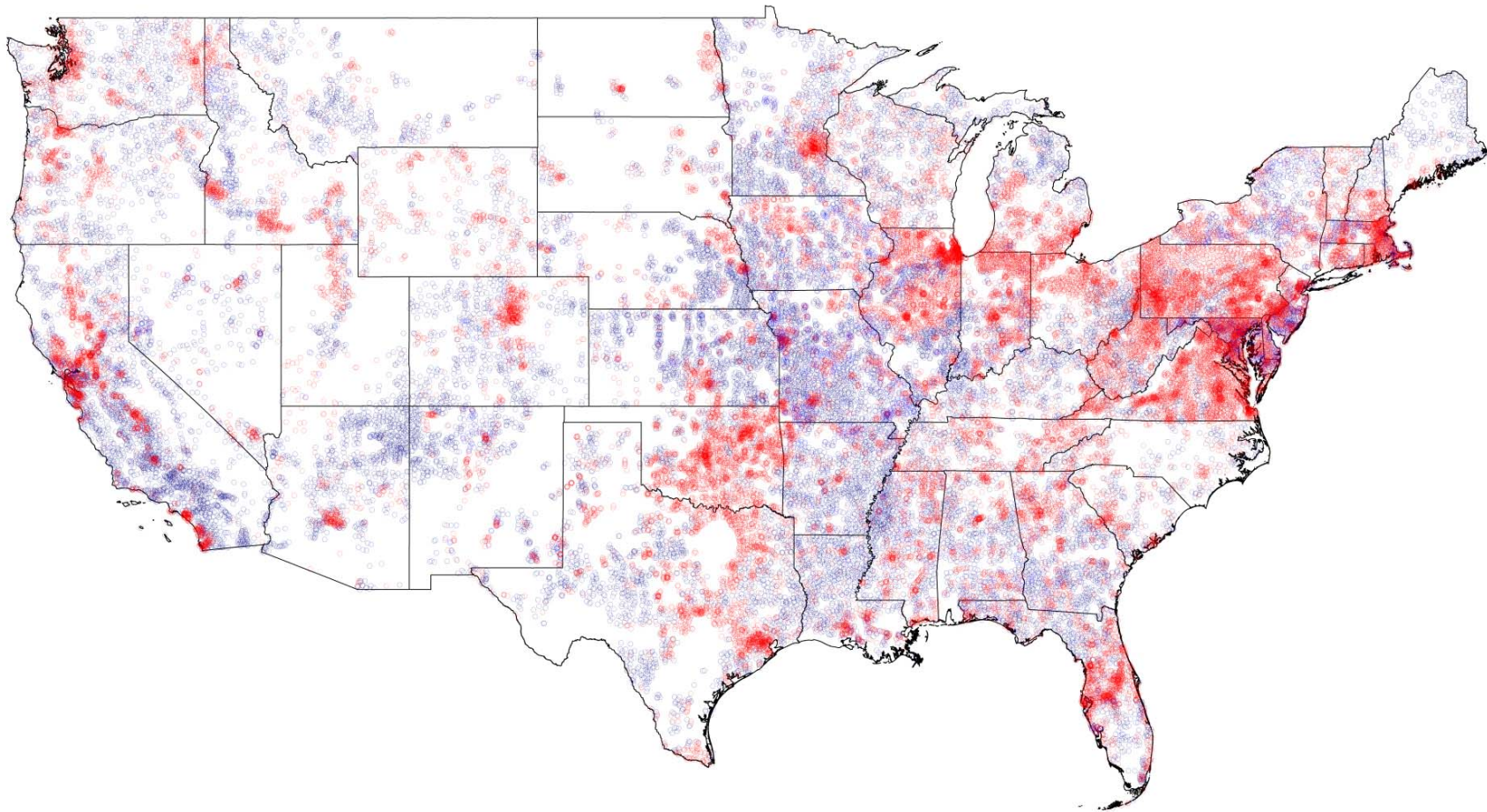


**Green = Excluding satellite results in minimal fiber/cable builds within CAF II budget**

**Red = FCC “unserved” areas would be left behind again**



**Including All Technologies Maximizes Service and Support to the Nation**



**Blue = Including satellite greatly expands areas within CAF II budget**

**Red = FCC “unserved” areas that CAF II auction/budget may still leave behind**